



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

LEGAL DIVISION - MIC: 82
450 N STREET, SACRAMENTO, CALIFORNIA
(P. O. BOX 942879, SACRAMENTO, CA 94279-0082)
TELEPHONE: (916) 327-3400
FAX: (916) 323-3387

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Executive Director

March 7, 1996

Dear Ms. _____

I am responding to your request for a legal opinion regarding the application of fuel taxes to a lease of trucks by _____ to the U.S. Postal Service where the fuel cost is included in the lease. Specifically, you have asked whether such diesel or gasoline is tax exempt and, if so, how a refund could be obtained.

Under the Diesel Fuel Tax Law (Rev. & Tax. Code §§ 60001 et seq.), including recent amendments provided under Senate Bill 1131, the United States government, its agencies, and instrumentalities are exempt from the tax on diesel fuel. (Rev. & Tax. Code § 60100 (a) (8).) New subsection (G) to section 60501 provides that "any person who sells diesel fuel to the United States and its agencies and instrumentalities" may be reimbursed and repaid the amount of the tax. This means that _____ could apply for a refund for the tax paid on fuel sold to the U.S. Postal Service, an unincorporated agency of the United States. In order to get a refund, _____ must register with the Board. Please contact our Fuel Taxes Division at (916) 322-9669 for assistance.

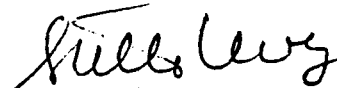
The Motor Vehicle Fuel License Tax Law (Rev. & Tax. Code §§ 7301 et seq.) has no provisions for reimbursement of the taxes where the ultimate consumer is the federal government. In a leading case, the United States Supreme Court held that the immunity of the federal government from state taxation depends upon whether the legal incidence of the tax is on the federal government. *United States v. New Mexico* (1982) 455 U.S. 720. The legal incidence of the tax on gasoline falls on the distributor, not the consumer. (Rev. & Tax. Code § 7351.) Since the U.S. Postal Service would be the consumer and not the distributor under the facts you have presented, the tax on the gasoline consumed by the rental vehicles would be subject to tax.

March 7, 1996

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Please feel free to call me if you have any questions regarding this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stella Levy".

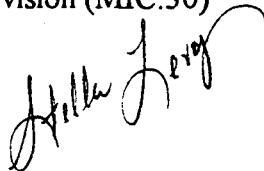
Stella Levy
Staff Counsel

SCL/wk

cc: Fuel Taxes Division

M e m o r a n d u m

To : Robert Frank
Fuel Taxes Division (MIC:30)

From : Stella Levy 
Staff Counsel

Subject: Leases of Trucks to the United States

Date: May 29, 1996

Please excuse the delay in responding to your memo of March 14, 1996. It was unclear to me as to whether our phone conversation had resolved your question. You asked for clarification of the legal opinion I provided to on March 7, 1996.

The issue raised by was whether diesel or gasoline was exempt from the fuel tax where fuel costs are included in a lease to the U.S. Post Office. You agree with my conclusion that under the Motor Vehicle Fuel License Tax Law there are "no provisions for reimbursement of the taxes where the ultimate consumer is the federal government." However, you have questions regarding my conclusion that under the Diesel Fuel Tax Law "the United States government, its agencies, and instrumentalities are exempt from the tax on diesel fuel" and that the amount of such tax paid by may be reimbursed. You have suggested that the fuel was not sold to the U.S., but was "consumed by as part of its business of providing leases" where it is unclear "if makes a separate charge for the fuel or not."

You haven't given us any discussion as to why we should import a sales and use tax analysis into the diesel fuel tax arena. Without the benefit of your analysis or reasoning, I cannot see any legal basis for changing the advice. Whether or not the fuel charges are separately stated, it is still a sale to the U.S. Government and exempt from taxation under Section 60100(a)(8)(G). This is unrelated to the audit issue regarding the documentation necessary to show the amount of fuel consumed by these particular rentals. You may well wish to draft a regulation spelling out what will be accepted as documentation both where the charges are separately stated and where they are not.

SCL:es

cc: Ed King (MIC:31)
Arlo Gilbert (MIC:33)
Lou Feletto (MIC:57)
Bob O'Neill (MIC:30)
Mary Armstrong
Janet Vining